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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/367,019 10/14/99 BOYE

P 10350/168

EXAMINER

IM52/0705

AMSTER ROTHSTEIN & EBENSTEIN
90 PARK AVENUE
NEW YORK NY 10016

GUARRIELLO, J

ART UNIT

PAPER NUMBER

1771

DATE MAILED:

07/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/367019

Applicant(s)

Boye

Examiner

John Guarriello

Group Art Unit

1971

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-8 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

Claim Rejections - 35 USC § 112

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claim 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear what the “zone” encompasses. It is not clear what the phrase “essential comprising” means, clarify. It is the examiner’s position that the “outer zone” is a layer of fabric, the “intermediate zone” may or may not be a layer of fabric, and the “inner zone” is a layer of fabric.

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In claim 2, it is not clear what “zone” encompasses for the same reasons given in claim 1.

In claim 3, it is not clear what the phrase “characterized in that the surface” encompasses since there are several surfaces or zones or layers, clarify.

In claim 4, it is not clear what the phrase “first layer of any kind” encompasses since reference is made to “any kind”, clarify.

In claim 5, it is not clear what the correct antecedent basis should be since claim 2 states “3d cloth 1, 3, 4” and this claim refers to claim 2 by the phrase “3d cloth 1, 3, 7”, clarify.

In claims 6-8, it is not clear what “characterized” encompasses. The Examiner is interpreting the phrase to mean **comprising**.

In claim 8, it is not clear what “preferential” encompasses regarding paths, this is not definite because the metes and bounds of the claim cannot be determined.

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17. Regarding claim 7, line 4 , the word "means" is preceded by the word(s) "it is fitted with", and in line 12, the word "means" is preceded by the words "and with", in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. 2,657,396.

Klein describes an air ventilated suit with an outer layer, an inner layer, and a area or zone where air may be circulated, (column 1, lines 5-35). Klein describes an outer layer which may be made from neoprene coated nylon (like the hydrophobic outer layer cloth--outer zone), (column 2, lines 3-8). Klein describes an inner layer (like the inner zone), (column 2, lines 9-10). Klein describes the intermediate zone which is a space or mesh which is maintained by a plurality of cords, (column 2, lines 10-17) which is similar to the claimed fabrics or layers connected by link threads. Klein describes the outer layer and the inner layer joined together by stitching, (column 2, lines 18-34). Klein describes the essential components of the claimed invention. Claims lack novelty.

Claim Rejections - 35 USC § 103

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19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz 3,536,576.

Schwartz describes a self-sealing space suit which is similar to the claimed composite textile material for protecting the human body with an outer layer (zone), inner layer (zone), and an intermediate layer or area (zone), (column 1, lines 40-72). Schwartz differs from the claimed invention because it is silent about the circulation of air in the intermediate zone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the intermediate layer of Schwartz so as to circulate air motivated with the expectation that since Schwartz describes the general parameters of a space suit it has been held that provision of

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adjustability, air circulating layer or zone, where needed involves only routine skill in the art, **In re Stevens, 101 USPQ 284 (CCPA 1954)**.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shepherd et al. 3,751,727 describes a pressure suit for high altitude flights, (see abstract). Shepherd describes the inner layer, outer layer and a "zone" between the layers.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Guarriello:gj

Patent Examiner

June 22, 2001



ELIZABETH M. COLE
PRIMARY EXAMINER